

Hon. Charles A. Legge (Ret.)
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Special Master

JAMS

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

CRAGO, INC., et al.,

Plaintiffs,

vs.

CHUNGHWA PICTURE TUBES, LTD., et al.,

Defendants.

No. 07-5944 SC
MDL No. 1917
JAMS Reference No. 1100054618

**REPORT AND RECOMMENDATION
REGARDING PLAINTIFFS' MOTION
FOR ENGLISH TRANSLATIONS OF
FOREIGN-LANGUAGE DOCUMENTS**

This Document Relates to ALL CASES

To the Honorable Samuel Conti, United States District Judge:

Plaintiffs move to compel defendants to produce their English language translations of foreign language documents which they have produced. Defendants oppose, and the issues have been briefed, argued and submitted for decision. This is the recommendation of the Special Master with respect to that motion.

Both the direct purchaser plaintiffs and indirect purchaser plaintiffs (jointly "plaintiffs") move for an order compelling all defendants to produce "all existing English translations of foreign language documents produced in this litigation." Plaintiffs seek translations that were done in the ordinary course of defendants' business, and translations done at the direction of defense counsel for this case.

The definition of the motion invites some closer analysis: First, the motion seeks the translations of foreign language documents which have already been produced in their foreign

1 language form. Second, it asks for the production of all existing English translations of those
2 documents, and plaintiffs are not asking defendants to do any translations for them. Third,
3 plaintiffs request documents that were prepared in the ordinary course of defendants' business,
4 totally apart from this litigation; and translations that were prepared at the direction of defense
5 counsel for this litigation. Defendants do not oppose the request for the first category; that is,
6 those prepared in the ordinary course of business and not in anticipation of litigation. However,
7 that concession does not help much, because it now appears that there are no (or at most *de*
8 *minimis*) such documents. We are therefore left with the issue of the translations which were
9 made as a result of selection by defense counsel for purposes of this case.

10 In opposition to the motion, in addition to a brief on behalf of all defendants, the Special
11 Master has received declarations from attorneys for eight of the defendants. The declarations on
12 behalf of four of the eight state that they have no translations at all. So this motion can be denied
13 in its entirety as to defendants Tatung, Matsushita, Philips, and Samsung.

14 The affidavits of the other four defendants (Toshiba, Panasonic, LG, and Hitachi) state or
15 imply that they have no translations of documents prepared in the ordinary course of business.
16 But they do have some translations of documents selected by defense counsel for specific
17 examination and possible use in this case. Those declarations elaborate on the methods of
18 selection and translation, which are sufficient to establish a *prima facie* showing of opinion work
19 product under Federal Rule of Civil Procedure 26(b)(3)(A) and (B).

20 Case authorities around the country have split on the question of whether the selection of
21 documents by defense counsel for translation constitutes opinion work product. However, the
22 issue has been discussed in this Northern District of California, in *In re: TFT-LCD Antitrust*
23 *Litigation*, No. M07-1827SI. In that case, Special Master, the Hon. Fern M. Smith, and the
24 District Court Judge, the Hon. Susan Illston, both concluded that selection for translation in a
25 litigation setting did constitute opinion work product, and that the translations need not be
26 produced. See Document No. 1420, dated December 14, 2009, and Order dated January 21,
27 2010. The *LCD* case involves many of the same defendants and counsel as in the present case,
28 and similar sets of facts and issues. Based upon the decisions in that case, the Special Master
recommends that the Court follow the conclusions of Judges Illston and Smith.

1 Plaintiffs have not made a showing of substantial need and undue hardship under FRCP
 2 26(b)(3)(A)(ii). The documents have already been produced to plaintiffs in the foreign language
 3 form. There is no doubt that having these translations of some of them would be a substantial
 4 expense saving to plaintiffs. But the Special Master concludes that the savings would not be
 5 material enough in the context of this case to constitute substantial need or undue hardship. The
 6 Special Master reaches that conclusion from the information supplied by the declarations: Some
 7 of the translations were done by bilingual attorneys retained by the defendants, and not by
 8 persons who would be competent to certify the translations. Many of the translations were made
 9 simply to obtain a rough understanding of the documents, and are incomplete. And most if not
 10 all would otherwise not be capable of being certified for use in court. Therefore, plaintiffs will
 11 still have to obtain their own translations to be certified for litigation purposes. While the
 12 number of translations is large, it is not a large percentage of the foreign language documents
 13 which plaintiffs must examine. Plaintiffs estimate that approximately 200,000 of the documents
 14 produced by defendants are in a foreign language. According to the declarations, the Special
 15 Master estimates that only somewhat over 2100 translations have been made. While that number
 16 is itself significant, it is only one percent of the estimated 200,000 foreign language documents
 17 that plaintiffs must address.

18 The Special Master therefore recommends that the District Court deny plaintiffs' motion.
 19 Respectfully Submitted,

20
 21 Dated: March 8, 2012


 22 Hon. Charles A. Legge (Ret.)
 23 Special Master

24 It is so Ordered.

25 April 3, 2012
 26 Date: _____


 27 Hon. Samuel Conti
 28 United States District Judge